

**MINUTES
HEARING OFFICER
FEBRUARY 4, 2014**

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona.

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Karen Stovall, Senior Planner
Sherri Lesser, Senior Planner
Diane McGuire, Administrative Assistant II

Number of Interested Citizens Present: 8

Meeting convened at 1:45 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by February 18, 2014 at 3:00 PM, to the Community Development Department.

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1. Ms. MacDonald noted that the Hearing Officer Minutes for January 21, 2014 had been reviewed and approved.

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2. Request approval to abate public nuisance items at the **WEBB PROPERTY (PL130458)** located at 8630 South Hazelton Lane. The applicant is the City of Tempe.

CONTINUED FROM THE JANUARY 21, 2014 HEARING OFFICER

CASE WITH DRAWN BY CODE INSPECTOR – PROPERTY IN COMPLIANCE

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3. Request approval to abate public nuisance items at the **ZIMMERMAN PROPERTY (PL130453)** located at 7325 South Lakeshore Drive. The applicant is the City of Tempe.

CONTINUED FROM THE JANUARY 21, 2014 HEARING OFFICER

CASE WITH DRAWN BY CODE INSPECTOR – PROPERTY IN COMPLIANCE

4. Review of compliance for the Use Permit to allow a Tobacco Retail Hookah Lounge for **BROADWAY CENTER – VERTIGO HOOKAH LOUNGE AND CAFÉ (PL130216)** located at 1320 East Broadway Road. The applicant is Ali Alsharif of Al Fayhaa LLC.

CASE CONTINUED BY COMMUNITY DEVELOPMENT STAFF TO UNDETERMINED DATE

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5. Request approval for a Use Permit to allow a new 60' – 0" monopalm wireless antenna with associated equipment structure for **VERIZON WIRELESS PHO LAMSOM (PL140001)** located at 7343 South Hardy Drive. The applicant is Steve Ciolek of Coal Creek Consulting.

Steve Ciolek of Coal Creek Consulting was present to represent this case. He acknowledged his understanding of the assigned Conditions of Approval.

Sherri Lesser, Senior Planner, noted that this monopalm is proposed for the north side of an industrial office building located between the Grove Parkway and Elliot Road at the northwest corner of Hardy Drive and Elliot Road in the parking lot. The closed residence is approximately 675 feet to the northeast across Priest Drive. Ms. Lesser noted Condition of Approval No. 7 refers to the Application Form for Wireless Projects that must be completed before this use permit becomes effective. Staff has received no inquires on this request and recommends approval.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

1. No significant increase in vehicular or pedestrian traffic.
2. The proposed use is similar to others in the area and there should be no nuisances created from odor, dust, gas, noise vibration, smoke, heat or glare.
3. The proposed use is not in conflict with the city's adopted plans or General Plan. There will be no impact to the surrounding area and it is located a substantial distance from single family residential.
4. The proposed use appears to be compatible with surrounding structures and uses. The neighboring properties are all industrial uses where monopole/monopalm structures are typically located within the City of Tempe.
5. No disruptive behavior is generated by this use. All equipment areas will be designed to minimize casual access.

DECISION:

Ms. MacDonald approved PL140001/ZUP14002 subject to the assigned Conditions of Approval:

1. The use permit is valid for the plans as submitted within this application.
 2. The applicant shall provide updated tenant and parking data during planning plan check process.
 3. Obtain all clearances from Building Safety prior to use permit becoming effective.
 4. Raise the height of enclosure wall to fully screen all equipment and generators.
 5. Provide a landscape island, designed per ZDC requirements, at the south end of scope of work area.
 6. All equipment to be removed within 30 days of termination of use.
 7. Applicant must complete the City of Tempe Application Form for Wireless Projects and Distributed Antenna System ("Das") Projects, for the file, prior to submittal for building permits and use permit becoming effective.
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6. Request approval for a Use Permit to allow live entertainment for **ROOFTOP LOUNGE (PL130477)** located at 501 South Mill Avenue. The applicant is Steve Baltz of Tempe Upstairs Inc.

The applicant, Steve Baltz of Tempe Upstairs, was not present to represent this case. Destiny Elliott spoke as his representative.

Steve Abrahamson, Planning & Zoning Coordinator, stated that this site is within the CC, City Center zoning District and is located on the southeast corner of Mill Avenue and 5th Street, on the third floor of the historic Laird and Dines building, facing Mill Avenue. The patio was added in 2002 and the business has been owned and operated for 7 years, and has had the same management for the past 17 years. The former business was the Owl's Nest Suite 301. The current business owner added a framed stage and a covered outdoor bar without a use permit being obtained or having a Development Plan Review, and the structure did not receive building permits. The property owner and business owner were notified by Code Enforcement and are in the process to determine the building safety and fire code requirements thru the Development Plan Review process. The Use Permit for live entertainment is contingent upon resolution to the Development Plan Review approval for design modifications to the patio and compliance with building and fire code requirements. Police staff has indicated that there have been 12 calls for service related to loud noise that can be attributed to this business between May 25, 2013 and January 17, 2014 from Hayden Square Condominiums and Tempe Mission Palms Hotel. No public input has been received on this request.

In the past outdoor live entertainment was prohibited and restricted to indoor use only. This changed in 2013, with the addition of a business on Mill Avenue that is entirely outdoors, the CASA. Staff is recommending approval, with conditions in conformance with the CASA live entertainment.

Mr. Abrahamson noted that representatives from the Building Safety Department and the Tempe Police were present to answer any questions Ms. MacDonald might have. He indicated that this is a reactive use permit in response to complaints generated to the Code Enforcement Division which prompted investigation into the live entertainment taking place on the rooftop area.

In response to a question from Ms. MacDonald, Mr. Abrahamson explained that there has always been access to the roof for use as a smoking patio, however only recently has this area been utilized for live entertainment.

Ms. MacDonald noted that there is a difference between a few people having access versus a live entertainment venue. She acknowledged that the applicant is asking for a live entertainment use permit while simultaneously working thru the Development Plan Review process to meet the requirements of the Building Safety Division as well as the Fire Department.

Steve Abrahamson stated that part of the DPR process was to conduct a structural evaluation of the area designated for outdoor live entertainment. The applicant will be required to submit plans to the Building Safety Division as part of this process and the exterior modifications and appearance on a historical building will be reviewed as well as speakers and compliance with fire codes. He noted on the site photographs where the applicant had added poles and a stage. The design issues related to lighting, misting system, bar canopy and others will be reviewed thru the DPR application.

Ms. MacDonald noted her concern that perhaps once DPR process is completed, that live entertainment may not be allowed.

Steve Abrahamson explained that the Building Permit's review was contingent on the live entertainment use permit being granted.

Ms. MacDonald stated that she would like to add two (2) conditions of approval, Number 13 and 14 so that no operation of activities will take place on the rooftop until they receive final approval for the DPR process as follows:

13. The Use Permit shall become effective if the Development Plan Review is passed by the Development Review Commission.
14. This Use Permit shall be reviewed six months after the final Building Safety Permit is issued.

Officer Ferraro, of the Tempe Police Department, responded to questions from Ms. MacDonald regarding report on calls for service that was generated by the Tempe Police. Ms. MacDonald questioned why items that had been highlighted on that report (included in the documentation with the staff summary report for this case) had different addresses. Officer Ferraro explained that the actual area contained in the report was from the Rio Salado Parkway to University Drive. The highlighted calls for service were those directly applicable to noise complaints of loud music in the vicinity of the Rooftop Lounge. For the first 6 months, there were no calls for service; however in the second six month period there were 12 calls for service related to excessive loud noise that can be attributed to this business. The repeated complaints came from primarily guests at the Mission Palms Hotel as well as residents at Hayden Square Condominiums.

Ms. MacDonald noted that those highlighted calls were marked as 'no further action' and asked what that meant. Officer Ferraro noted that it meant that no additional inspection action was required after the initial response to the complaint.

Mr. Chris Hester and Mr. Doug McDonald, Building Safety Inspectors, spoke regarding the issues involved in the DPR process.

Ms. MacDonald asked Mr. Hester what was required to make this applicant fully compliant. Mr. Hester referred to the poles that had been installed on the roof and noted that issues of structural elements needed to be reviewed as well as concerns about ventilation, etc.

Ms. MacDonald stated that her biggest concerns related to public health and safety issues which should be resolved within the applicable codes. She stated that she felt that the roof top space should not be used as a venue until these issues were resolved.

Mr. Abrahamson stated that both Building Safety and the Fire Department would need to make their determination based on the structure itself. He explained that the application for the use permit for live entertainment was not specifically a use permit for just that rooftop space. Basically, he noted, this business has a use permit for indoor live entertainment, and that this application is for live outdoor entertainment. Building Safety and Engineering will determine during the DPR process whether the rooftop is safe to this live entertainment use.

Ms. MacDonald stated that in the best of circumstances an applicant applies for a use permit before performing the work.

Doug McDonald explained that the area in question has always been an outdoor patio area which smokers utilized in the past. Ms. MacDonald said this information made things clearer knowing that the area had been used prior to the live entertainment issues.

Mr. Abrahamson noted that dancing and the DJ and cigarette use in the rooftop area are all items to be considered as possible hazards.

Destiny Elliott spoke, stating that she was representing Mr. Baltz who was unavailable for this hearing. She explained that the rooftop work had been done in an effort to boost the business.

Ms. MacDonald stated that the work had been done without any permits and that this is called an intensification of use. This intensification requires a second look to re-evaluate the proposed work until it can be determined that it is a safe, viable plan.

Ms. MacDonald explained that it was not their intent to shut down the business, but that no rooftop access should be allowed until the evaluation (i.e. DPR process) is complete.

Mr. Abrahamson conferred privately with the Building Staff (Mr. Hester and Mr. McDonald) and suggested that, based on that discussion, if the DJ and shade canopy were removed, that the Rooftop Lounge could continue to operate utilizing the outdoor patio area until the DPR process was complete.

Ms. MacDonald questioned what the time frame would be for the review process to be complete if this was done. Mr. Abrahamson, with the concurrence of Mr. McDonald and Mr. Hester, stated that it could be done within 24 hours, if the shade canopy was removed.

A short recess was taken while Ms. Elliott contacted Mr. Baltz by phone. She returned to the hearing. At that time, Mr. Abrahamson explained the appeal process should the Hearing Officer decide to deny this use permit. Ms. Elliott requested a continuance for the hearing, for a Use Permit to allow live entertainment at the Rooftop Lounge.

DECISION:

Ms. MacDonald continued PL130477/ZUP14006 to the February 18, 2014 Hearing Officer public hearing. She strongly advised that Mr. Baltz attend that hearing, as he will ultimately be the person to address concerns related to this use permit request.

The next Hearing Officer public hearing will be held on February 18, 2014.

There being no further business the public hearing adjourned at 2:50 PM.

Prepared by: Diane McGuire, Administrative Assistant II
Reviewed by:



Steve Abrahamson, Planning & Zoning Coordinator
for Vanessa MacDonald, Hearing Officer

SA:dm